

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

&

THE HONOURABLE MR. JUSTICE V.GIRI

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

MFA.No. 1021 of 2001()

**OP(MV).239/1993 of MOTOR ACCIDENT CLAIMS TRIBUNAL,
IRINJALAKUDA**

APPELLANT: PETITIONER

**SR.GONZAGA F.C.C. @ A.C.KOCHUMARIYAM
AGED 48 YEARS, D/O. A.M.OUSEPH (LATE),
ALAPPAT HOUSE, KODANNUR DESOM & VILLAGE,
THRISSUR TALUK.**

**BY ADV. SRI.P.V.BABY
SRI.A.N.SANTHOSH**

RESPONDENTS: RESPONDENTS

- 1. K.V.DEVASSY, KATHIYADAN HOUSE,
MUTTATHARAYIL , KURUPPUMPADY,
RAYAMANGALAM VILLAGE, ERNAKULAM.**
- 2. ORIENTAL INSURANCE CO.L LTD., ANGAMALY.**
- ADDL. 3. B.JAYAKUMAR, KAIPPITTIL HOUSE,
MANIKKAMANGALAM, ERNAKULAM.**
- 4. " DEVASSY, KALLANAKKAL HOUSE, ANGAMALY.**
- 5. " NATIONAL INSURANCE CO. LTD., ERNAKULAM.**
- 6. " THE DIRECTOR, ST.ANTONYS MISSION
HOSPITAL, PAZHUVIL, THRISSUR.**

M.F.A. NO.1021/2001

- 7. " JOSE @ OUSEPH, S/O. LONAPPAN,
PALAKKAL HOUSE, MULAMKUNNATHKAVU,
THRISSUR.**
- 8. " NATIONAL INSURANCE CO. LTD., THRISSUR.**

**BY ADV. SRI.JOE KALLIATH - R5 & R8
SRI.M.JACOB MURICKAN - R2
SRI.P.AYYAPPAN - R1
SRI.T.ANCY
SRI.P.K.MOHAMMED PUZHAKKARA**

**THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 10/08/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

tss

J.B.KOSHY & V.GIRI, JJ.

M.F.A.No.1021 of 2001

Dated this the 10th day of August, 2007.

JUDGMENT

Koshy, J.

The appellant suffered very serious injuries in a motor accident. Contending that the accident occurred due to the negligence of the driver of the first respondent and the vehicle insured by the 2nd respondent insurance company, she filed an application claiming compensation of Rs.4 lakhs. According to her, she suffered the following injuries.

"Fracture Trochentric (left), Internal traction fixation of steel plate and screw done. Fracture ribs 8, 9, 10 (right), Compression fracture 10th thoracic vertebra, Blunt and crush injury to muscle neck, crush injury all over body."

2. The tribunal accepted the contention that the accident occurred due to the negligence of the driver of the offending vehicle which was covered by a valid insurance by the second respondent. Only the quantum of compensation is challenged in this appeal, as the total compensation granted is only Rs.1,28,920/-.

3. The appellant was working as a staff nurse in the Jubilee Mission Hospital, Thrissur. It is her contention that even though she has obtained all the qualifications of a staff nurse, she is getting only a salary of Rs.4,000/- per month. Being a Nun working in the Mission Hospital, she is getting an honorarium of Rs.4,000/- and she was aged 44 years at the time of accident. The tribunal fixed 15 as the multiplier. Even though the tribunal has stated that she was getting Rs.2975/- as pay and Rs.1,450/- as allowance, for the purpose of computation of compensation, only Rs.1,000/- was taken as the monthly income. It is her case that, after passing the Diploma in Medical and Surgical course, her monthly income would have increased but for the accident. But, before getting the increased honorarium, she met with the accident. The tribunal has fixed Rs.1,000/- as the monthly income. That is very low. Even accepting the monthly income fixed which she was actually receiving notwithstanding her qualifications, a little more could have been added. At least Rs.1,500/- ought to have been taken as the monthly income, since under the 2nd schedule is Rs.1,250/- per month (Rs.15,000/- per year) is the notional income of a non-earning person.

4. With regard to the injuries, the tribunal has stated as follows:

"A7 is the copy of the wound certificate issued from St.James Hospital, Chalakudy wherein it is noted that the petitioner sustained the following injuries in the RTA at Muringoor at 5.10 p.m. "Fracture ribs 8, 9, 10 right, fracture spine D10. Inter-trochantric fracture left hip. Soft tissue injury cervical spine. It is also noted therein that the petitioner was transferred to Jubilee Mission Hospital, Thrissur for better treatment.

Ext.A8 is the copy of the wound certificate issued form Jubilee Mission Hospital, Thrissur wherein it is noted that the petitioner sustained the following injuries in the road traffic accident. 1. Fracture ribs ® Fracture neck (L) femur. (3) Fracture spine-cervical and 'L' DD junction (4) Suspected intra abdominal injury.

Xray revealed fracture 8, 9, 10(R) ribs - Post Trochanteric fracture left femur, fracture spine D10 and C2. Ext.A9 series (2 Nos.) are the discharge summaries issued form Jubilee Mission Hospital, Thrissur wherein it is certified that the petitioner was treated as inpatient in that hospital from 4.3.93 to 11.5.1993 and referred to Kovai Medical Centre and Hospital Limited. The injuries sustained by the petitioner were noted in these documents as follows:

"(a) Trochantic Fracture (L), (b)Right 8, 9, 10 rib fracture, (c) Compression fracture 10th thoracic vertebra, (d) Sprain neck."

It is also noted in Ext.A9 that the petitioner was advised to take rest for a period of 3 months from 11.5.93. Ext.A10 is the discharge summary issued from Kovai Medical Centre at Coimbatore wherein it is noted that the petitioner was treated as inpatient in that hospital from 11.5.93 to 24.5.93. The final diagnosis was noted as trochanteric fracture left side and operated outside with condylar plate fixation. Ext.A11 is the discharge summary issued from the same hospital wherein it is noted that the petitioner was treated as inpatient in that hospital from 7.8.96 to 11.8.96. The final diagnosis was noted there was fracture proximal femur left with DHS in SITU-United. Ext.A12 is the disability certificate issued on 6.8.99 by Dr.Jose Kurian Kattukaran, Orthopaedic Surgeon at Government Hospital, Chalakudy wherein it is certified that the petitioner is having 2 cm. Shortening of left lower limb, limitation of neck movements, limping, difficulty to stand, to walk long or fast, to squat, to do heavy work, to bend forwards and to turn neck around and the permanent disability was assessed at 49% she being a nurse by profession."

5. The tribunal has taken at 25% disability, even though Ext.A12 certificate shows that she had 49% disability as a staff nurse by profession. Considering the nature of the disability, we are of the opinion that no increase is necessary on that count. We are not

inclined to increase the percentage assessed by the tribunal. Since we have taken Rs.1,500/- as the monthly income, the compensation payable will be:

$$1500 \times 12 \times 15 \times 25/100 = \text{Rs.67,500/-}$$

6. The tribunal has granted Rs. 45,000/- on account of permanent disability. Thus, she is entitled to an additional compensation of Rs.22,500/- as compensation for loss of earning and disability. She has produced medical bills for Rs.82,392.57. The tribunal has granted only Rs.50,000/-. Since she had undergone long treatment in various hospitals, apart from her own hospital and treated at Bangalore and Kovai, we are of the opinion that for treatment, at least, an amount of Rs.1,00,000/- ought to have been granted. There are many expenses which are not covered by the bills. She was treated for over a period of 5 years. Several operations were conducted. Here, for treatment expenses, medical bills, other hospital expenses, future treatment etc., Rs.50,000/- should have been granted. It is submitted that the compensation awarded for pain and suffering and other heads are low. We are not inclined to enhance the compensation on any other count considering all aspects. The

appellant will be entitled to get additional compensation of Rs.72,500/- {Rs.50,000 + 22,500} over and above the amount awarded by the tribunal. The additional compensation awarded as per this judgment should be deposited by the insurance company with 7.5% from the date of application till the date of payment, over and above the amount granted by the tribunal.

Appeal is disposed of as above.

Sd/-

(J.B.KOSHY)
JUDGE

Sd/-

(V.GIRI)
JUDGE

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J.B.KOSHY & V.GIRI, JJ.

M.F.A.No.1021 of 2001

JUDGMENT

10TH AUGUST, 2007.
